

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

PAUL J. BARFKNECHT,
RESPONDENT.

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The parties to this action for the purposes of §227.53, Wis. Stats., are:

Paul J. Barfknecht, R.Ph.
4091 Westview Lane
Oshkosh, WI 54904

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1 Respondent Paul J. Barfknecht (DOB 11/11/67), is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #11638, originally granted on 8/20/91.

2 In March, 1993, respondent became the managing pharmacist for Quantum Health Care Innovations, an existing pharmacy business of supplying a number of area nursing and group homes. Most of the medications provided to these facilities are supplied in "cassettes" which are lockable portable cabinets with 16-32 drawers, one for each patient. Each drawer is filled at the pharmacy with the medication for that patient, packaged in unit dose form. Cassettes are delivered to nursing homes daily, and to the group homes monthly.

3. Immediately before the time Quantum took over the business, a pharmacist was not consistently either personally preparing all prescribed medications and dispensing them, nor conducting a final check of all cassette drawers before the cassettes were delivered to the facilities, and instead the medications were procured, counted, packed, and checked in many cases by unlicensed persons. Respondent was employed as a staff pharmacist for the business before Quantum took over, and knew that this was the situation.

4 Respondent recognized at the time he became managing pharmacist in March, 1993, that as long as auxiliary personnel were to be used for procuring, measuring or counting prefabricated dosage forms, that a final check was required to be performed by a licensed pharmacist, and that this would require additional pharmacist staff and other improvements in operations which would enable the pharmacists to devote sufficient time to checking and performing all other duties which must be performed only by licensees. Respondent has no financial investment or interest in the profitability of the business, and promptly requested the owner to provide sufficient licensed staff to comply with the rules.

5. When Quantum took over the business in March, 1993, approximately 100-110 hours per week of pharmacist time were devoted to the business. In fact, approximately 150-175 hours of pharmacist and intern time would have been required to check all medications. During the period March, 1993 to August, 1994, respondent's superiors did (at respondent's repeated request) diligently attempt to recruit pharmacy staff and did contract for temporary pharmacists' services, and respondent did make other improvements in efficiency which enabled respondent and his licensed pharmacists and interns to check an increasing percentage of the dispensed medications. Between March, 1993, and August, 1994, the business did not substantially change in size. In August, 1994, respondent achieved a level of staffing and efficiency in operations which provided for a pharmacist check of all medications procured, measured, or counted by auxiliary personnel, for all patients.

6. The Board recognizes that in this matter the managing pharmacist did not have full authority to expend monies to provide sufficient levels of licensed staff, and did not personally gain from noncompliance. However, respondent's acceptance of the responsibility of being the managing pharmacist requires that he accept responsibility for such noncompliance. The managing pharmacist is responsible by law for the professional operations of the pharmacy, and its compliance with professional standards and legal requirements.

CONCLUSIONS OF LAW

7. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

8. The conduct described in paragraph 3, above, violated § Phar 7.01(1)(c), Wis. Adm. Code, and §450.09(1), Wis. Stats. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Paul J. Barfknecht, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter

IT IS FURTHER ORDERED, that the license to practice pharmacy of respondent is LIMITED in the following respect: respondent shall not be the managing pharmacist of any pharmacy for twenty four months from the date of this Order.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$1,000, to be paid within 90 days of this Order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 13 day of June, 1995.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas McGeary
a member of the board

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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

PAUL J. BARFKNECHT, :
RESPONDENT. :

STIPULATION
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It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been issued in this matter.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

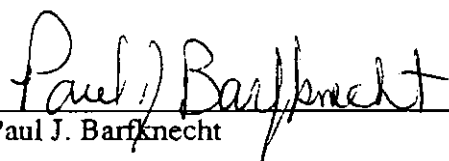
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

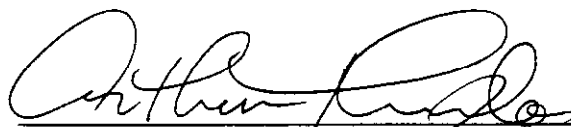
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.


Paul J. Barfknecht
5-23-95
Date


Alyson K. Zierdt, Attorney for Respondent
5/25/95
Date


Arthur Thexton, Prosecuting Attorney
Division of Enforcement
5-30-95
Date

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

JUNE 16, 1995

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)